

REMARKS

Claims 1, 7-9, 11, 12, 17-19 and 23-39 remain in the application.

Claims 26-29 are allowed. (The Office Action Summary indicating allowance of claims 26-35 is in error because claims 30 and 32-35 are rejected, and paragraph 10 on page 12 indicates that only claims 26-29 are allowed)

Claim 31 was indicated to be allowable subject to being rewritten in independent form. Rewriting of claim 31 is being held in abeyance pending reconsideration of the rejection of parent claim 30.

In view of the allowance and indicated allowability of claims 26-29 and 31, the claims remaining for consideration are claims 1, 7-9, 11, 12, 17-19, 23-25, 30 and 32-39.

The objection to claim 18 as being a duplicate of claim 25 has been overcome by correcting the dependency of claim 25.

The significance of the Examiner's comments concerning double patenting in paragraph 3 on pages 2 and 3 of the Office Action is not understood because there are no claim rejections based on double patenting.

Claims 1, 12, 19 and 30 are **objected** to in paragraph 5 on pages 3-5 of the Office Action. **No Statute or Rule is cited by the Examiner to identify the underlying basis for this objection.**

The **objection** is said to be on grounds that the specification fails to provide support for the limitation: "into engagement with a support surface that covers said bottom opening when said plane outer surface of said attachment flange rests against the support surface."

Claim **objections** are reserved for purely formal matters, such as an allowable dependent claim that depends from a rejected claim. **Objections** relate to matters of **form**, whereas a

rejection concerns the *merits* of the claim. Objections are not appealable, and must be reviewed by way of a Petition to the Commissioner. If the Examiner insists on maintaining the erroneous objection to claims 1, 12, 19 and 30, applicant will have no choice but to Petition the Commissioner because objections are not appealable.

Perhaps the Examiner meant to reject claims 1, 12, 19 and 30 under 35 U.S.C. 112, ¶1, because the reason used by the Examiner for the objection goes to the merits of the claim and/or the disclosure and not to a mere matter of form.

The following pages and lines of the disclosure relate to attachment of the fitting to a concrete form:

Abstract lines 2-5:

“A flange extends outwardly from the fitting wall around the bottom opening and has fastener-receiving holes for attaching the fitting to a plane surface of a concrete form.”

Page 1 lines 5 and 6:

“The application is particularly concerned with fittings for attaching ENT tubing to concrete forms.”

Page 2 lines 5 and 6:

“It is a principal object of the present invention to provide an improved fitting for attaching ENT tubing to concrete forms.”

Page 4 lines 5-7:

“Fitting A is particularly suited for use in attaching electrical non-metallic tubing, commonly known as ENT tubing, to a concrete form.”

Page 4 lines 10-14:

A peripheral flange 18 extends outwardly around circular opening 16 and has a plane outer flange surface 20 that is positionable against a plane surface of a concrete form. A plurality of circumferentially-spaced fastener receiving holes 24 are provided

in flange 18 for attaching the fitting to a plane surface of a concrete form.”

Page 6 lines 7-11:

“Fitting B has a generally rectangular flange 74 extending outwardly therefrom, and fastener receiving holes 76 are provided through flange 74 at the corners thereof for attaching fitting B to a flat surface of a concrete form. The bottom outer surface 78 of flange 74 is plane for positioning against a plane surface of a concrete form.”

Page 7 lines 19 and 20:

“FIGS. 19 and 20 show an end portion of a corrugated ENT tube 110 received in socket 30.”

FIGS. 19 and 20:

The FIGS. show the tube end portion occupying the entire length of the fitting socket with the tube end bottomed out at the same plane as the plane outer flange surface 20 (Figs. 2, 4, 5, 7) or 78 (Figs. 12, 13, 15, 15) that is positioned against the plane surface of a concrete form. See lines 11 and 12 on page 4, and lines 10 and 11 on page 6.

The Examiner does not explain her contention with respect to the phrase that is objected to. Is it the Examiner’s contention that a person skilled in the art would not understand from the specification and drawing that the end portion of the ENT tube is fully inserted into the fitting socket until the tube end engages the form surface to which the fitting is attached?

The Examiner has the initial burden of presenting evidence or reasoning to explain why a person of ordinary skill in the art would not recognize in the disclosure a description of the limitation that is objected to. The Examiner has provided no evidence or reasoning to support her position.

That the specification does not specifically provide that FIGS. 19 and 20 show the tube end engaging the form surface to which the fitting is attached is of no consequence. An express

disclosure in the specification is not required to support newly added claim limitations, because such limitations also can be supported by implicit or inherent disclosures.

A person of ordinary skill in the art could not possibly fail to find in the disclosure a teaching that the tube is shoved into the socket until the tube end bottoms out on the form surface to which the fitting is attached. What else could a skilled person possibly understand?

Amended material that is inherently contained in the original application cannot constitute new matter. Koito Mfg. Co. v. Tum-Key Tech, LLC, 381 F.3d 1142, 1154 (Fed. Cir. 2004), citing Schering Corp. v. Amgen Inc., 222 F.3d 1347, 1352 (Fed. Cir. 2000).

Drawings can be sufficient to meet the written description requirements of 35 U.S.C. §112. See Lamps Plus, Inc. et al. v. Patrick S. Dolan et al., 2006 WL 133469, page 3 (Fed. Cir. 2006), citing Koito.

"[T]he specification need not describe the claimed subject matter in exactly the same terms as used in the claims; it must simply indicate to persons skilled in the art that as of the [filing] date the applicant had invented what is now claimed." All Dental Prodx, LLC v. Advantage Dental Products, Inc., 309 F.3d 774, 779, (Fed. Cir. 2002), citing Eiselstein v. Frank, 52 F.3d 1035 (Fed. Cir. 1995).

All Dental further provides: "However, the failure of the specification to specifically mention a limitation that later appears in the claims is not a fatal one when one skilled in the art would recognize upon reading the specification that the new language reflects what the specification shows has been invented." All Dental at 779.

Claims 1, 12, 19 and 30 have been amended to recite that the socket fingers are configured to releasably hold the tube end portion in the socket against unintentional displacement therefrom while permitting separation of the tube from the socket. This

advantageous arrangement permits removal of the fitting from the concrete after the concrete has been cured and the forms removed so that the tube end portion is freed for attachment to other electrical hardware.

The Examiner's overzealous, unnecessary and misguided fixation on lack of support for claim limitations obscures the merits of the invention. Nitpicking and requiring applicant to specifically address every new claim limitation is absurd. Nevertheless, support for the added claim limitation is as follows:

Abstract lines 12 and 13:

"The teeth have rounded ends to facilitate ratcheting movement of the ENT tube end portion both into and out of the socket."

Page 1 lines 16 and 17:

"In accordance with one arrangement, the teeth are configured to facilitate both insertion and withdrawal of an ENT tube with respect to the socket."

Page 1 lines 18-21:

"In accordance with another aspect of the application, only two of the plurality of the resilient fingers have teeth thereon so that the fitting is easily removable from an end portion of an ENT tube after the concrete has cured and the form has been removed."

Page 2 lines 9 and 10:

"It is an additional object to provide a fitting that is easy to remove from a cured concrete mass."

Page 5 lines 20-23:

Teeth 41b, 44b are configured so that the force required to insert an end portion of an ENT tube into the socket is around the same, or not significantly less than, the force required to remove the end portion of the ENT tube from the socket."

Page 7 lines 4-6:

“The inwardly facing ends of the teeth are smoothly curved or rounded as shown in FIG. 18 to facilitate insertion and removal of an end portion of an ENT tube with respect to the socket.”

Page 7 line 19 to page 8 line 2:

“FIGS. 19 and 20 show an end portion of a corrugated ENT tube 110 received in socket 30. Tube 110 has longitudinally-spaced annular grooves 112 alternating with annular ridges 114, and the teeth 41b, 44b on fingers 41, 44 are received in one groove to hold the tube against accidental displacement from within the socket while the concrete forms and reinforcing bars are readied for pouring concrete, and during the placement of the concrete. The reduced radial thickness of fingers 41, 44 beneath teeth 41b, 44b provides clearance for the ENT tube so that the tube does not engage the inner surfaces of the tooth fingers below the teeth. Rounding of the tooth ends provides cam action to facilitate insertion of the tube end portion into the socket and withdrawal thereof from the socket. The configuration is such that the force required to insert a tube end portion into the socket is not much different from the force required to separate the tube from the socket.”

Page 8 lines 12-15:

“Thus, the teeth project a very short distance into an annular groove 112 in the ENT tubing, and the teeth are a loose fit in the groove because the groove longitudinal width is much larger than the tooth thickness in the same direction.”

Claims 1, 7, 9, 11, 12, 17, 18, 25, 30 and 32-35 were rejected under 35 U.S.C. §103(a) on U.S. Patent No. 6,988,747 to Allen et al taken with U.S. Patent No. 685,694 to Schamp. Claims 8, 19, 23 and 24 were rejected on the same grounds and references when further considering U.S. Patent No. 4, 864, 782 to Hasty.

Allen et al discloses a fluid connector or coupling having collets 30 with fingers 44 having sharp teeth that bite into tubing to prevent disassembly of the connector:

“The sharp-edge distal end teeth of the lock fingers bite into the tubing exterior sufficiently to lock the tubing against slide-out removal from the coupling.” See lines 28-31 of column 2. Also see lines 37-42 of column 5, and the disclosure beginning in line 66 of column 1 and continuing through line 5 of column 2.

The fitting of the present application is readily removable from the tubing that extends into the fitting socket so that the tubing end portion can be connected with other electrical hardware. The collet 30 of Allen et al would not be suitable for use in attaching ENT tubing to the surface of concrete forms because the fitting could not be separated from the tubing end portion after curing of the concrete and removal of the forms.

The claims also recite the entrance portion of the fitting socket as being generally cylindrical with fingers inclined inwardly from the cylindrical entrance portion toward the socket axis. The tubing is a close fit in the generally cylindrical entrance portion of the socket as shown in FIGS. 19 and 20. This prevents flow of poured concrete into the area of the fingers where it could enter the spaces between the fingers and flow into the corrugations in the tubing to prevent separation of the fitting from the tubing end portion.

The Allen et al collet 30 does not have a socket with a generally cylindrical entrance portion and does not have fingers that are inclined inwardly toward the socket axis from the cylindrical entrance portion. The socket in Allen et al is tapered along the surface of a cone along its entire length. FIG. 2 of Allen et al shows a tube 12 extending through the socket in the collet 30 and a significant space is left around the tube along the entire socket. Poured concrete would flow into that space and permanently bond the collet to the tube. The concrete also could seep through the spaces between the fingers and undesirably fill the space intended to be left in the concrete surface.

The Examiner provides no teaching, suggestion or motivation for a person of ordinary skill in the art to add the flange of Schamp to a collet 30 in Allen et al. If a flange were to be added to the Allen et al coupling, why wouldn't it be added to the body member 16? There already is a partial flange 39 on the Allen et al body member 16. Why not simply make that

flange 39 of Allen et al larger? What is it that would compel a person of ordinary skill in the art to add a flange to a collet 30? Even if a flange were to be added to the Allen et al collet, why would it be added to the end of the collet opposite from the socket entrance end instead of at the socket entrance end?

The Examiner cannot possibly contend that it would be obvious for a person of ordinary skill in the art to take a collet from the Allen et al fluid coupling, add a flange to the end portion of the collet opposite from the socket entrance end, add a generally cylindrical entrance portion to the socket, reshape the finger end portions to make it possible to separate the collet from an inserted tube, and then use the revised collet for attaching ENT tubing to the surface of concrete forms. The prior art simply does not disclose or suggest such modifications, and there is no teaching, suggestion or motivation in the art itself for a skilled person to make such modifications.

The dependent claims recite other features that are not disclosed or suggested by the references. Claims 7 and 12 recite the peripheral wall of the fitting as having a generally frusto conical shape. This facilitates removal of the fitting from a cured concrete mass after removal of the forms. There is no disclosure that the Allen et al collets 30 have frusto conical peripheral walls, and there is no reason why they would be made frusto conical. The apparent external taper on the Allen et al collets 30 in FIG. 2 is the taper on the external ribs 37 as best shown in FIGS. 7 and 8, and not on the peripheral wall itself.

Claims 9, 17 and 24 recite the V-shaped spaces between the fingers so that the fingers decrease in circumferential width. There is no disclosure or showing of V-shaped finger spaces in Allen et al.

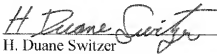
Claims 11, 18 and 25 recite that there are more than three fingers, and *only two* generally opposed ones of the fingers have radially inwardly extending teeth thereon. This facilitates the ability to separate the fitting from the tubing. In Allen et al, all of the fingers have sharp teeth, and there is no reason why some of the sharp teeth would be eliminated because Allen et al desires to prevent separation of the tube from the collet.

Claims 8, 19, 23 and 24 recite the embodiment of FIGS. 9-18 wherein the socket axis is inclined to the plane of the attachment flange outer surface. The Hasty roof flashing vent does not provide any teaching, suggestion or motivation for a person of ordinary skill in the art to incline the Allen et al socket axis relative to a plane surface of a flange that is added to the Allen et al collet. Where in the art is there any remote teaching, suggestion or motivation whatsoever for a skilled person to so modify the Allen et al collet?

Claims 36-38 more specifically recite the finger teeth that are configured to releasably hold an end portion of an ENT tube while permitting movement of the tube both into and out of the socket. Claim 39 recites the novel and unobvious fitting attached to a surface of a concrete form. Allen et al does not disclose or suggest these concepts.

In the absence of more pertinent art, this application is now in condition for allowance and an early notice to that effect is earnestly solicited.

Respectfully submitted,


H. Duane Switzer
Reg. No. 22,431
Jones Day
North Point
901 Lakeside Avenue
Cleveland, OH 44114-1190
216-586-7283

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